

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

SCOTT JONES,

Plaintiff,

v.

Civil Action No. 11-cv-12134

District Judge Lawrence P. Zatkoff
Magistrate Judge Laurie J. Michelson

PRISON HEALTH
SERVICES, et al.,

Defendants.

**REPORT AND RECOMMENDATION TO DISMISS AS MOOT
DEFENDANT PRISON HEALTH SERVICES, INC.’S
MOTION TO DISMISS FOR FAILURE TO PROSECUTE [DKT. 64]**

Plaintiff Scott Jones, a former MDOC inmate proceeding *pro se*, brought this civil rights case alleging that Defendants Prison Health Services (“PHS”), several individual doctors, John Does 1-20, and MDOC violated his constitutional rights by, inter alia, denying, or at least delaying, medical care for his alleged cancer. (Dkt. 1, Compl. at 5.) All pretrial matters have been referred to this Court pursuant to 28 U.S.C. § 636(b)(1)(B). (Dkt. 14.)

On August 29, 2011, PHS moved for dismissal and/or summary judgment on the grounds that PHS cannot be held liable for constitutional violations under a respondeat superior theory and Plaintiff failed to exhaust his administrative remedies prior to filing suit. (Dkt. 31.) After Plaintiff’s motion for extension of time to file a response was granted (Dkt. 30), this Court ordered Plaintiff to respond on or before September 30, 2011. (Dkt. 34.) Plaintiff sought another extension (Dkt. 51) and, on October 19, 2011, this Court ordered Plaintiff to file a response brief by November 2, 2011.

(Dkt. 53.) One month later on December 8, 2011, when Plaintiff still had not filed a response to PHS's dispositive motion, PHS filed a separate Motion to Dismiss for Failure to Prosecute pursuant to Fed. R. Civ. P. 41. (Dkt. 64.)

Prior to deciding the Motion to Dismiss for Failure to Prosecute, this Court issued a Report and Recommendation to grant PHS's substantive Motion to Dismiss and/or for Summary Judgment. (Dkt. 65.) On March 28, 2012, District Judge Lawrence P. Zatkoff entered an Order adopting the Report and Recommendation and granting PHS's Motion to Dismiss and/or for Summary Judgment. (Dkt. 75.) Thus, the claims against Defendant PHS have been dismissed in their entirety.

Accordingly, this Court RECOMMENDS that PHS's Motion to Dismiss for Failure to Prosecute be DISMISSED AS MOOT.

FILING OBJECTIONS TO THIS REPORT

The parties to this action may object to and seek review of this Report and Recommendation within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 596 (6th Cir. 2006); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *McClanahan v. Comm'r Soc. Sec.*, 474 F.3d 830 (6th Cir. 2006) (internal quotation marks omitted); *Frontier*, 454 F.3d at 596-97. Objections are to be filed through the Case Management/Electronic Case Filing (CM/ECF) system or, if an appropriate exception applies, through the Clerk's Office. *See* E.D. Mich. LR 5.1. A copy of any objections is to be served upon this magistrate judge but this does not constitute filing. *See* E.D. Mich. LR 72.1(d)(2). Once an

objection is filed, a response is due within fourteen (14) days of service, and a reply brief may be filed within seven (7) days of service of the response. E.D. Mich. LR 72.1(d)(3), (4).

Date: April 4, 2012

s/Laurie J. Michelson
Laurie J. Michelson
United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on April 4, 2012.

s/Jane Johnson
Deputy Clerk